

104TH CONGRESS  
2D SESSION

# H. R. 4323

To amend the Internal Revenue Code of 1986 to make higher education more affordable by providing tax benefits to individuals who save for, or pay for, higher education.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 1996

Mr. SCHUMER (for himself and Ms. SLAUGHTER) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to make higher education more affordable by providing tax benefits to individuals who save for, or pay for, higher education.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Affordable Col-  
5 lege Tuition Act of 1996”.

6 **SEC. 2. DEDUCTION FOR HIGHER EDUCATION EXPENSES.**

7 (a) DEDUCTION ALLOWED.— Part VII of subchapter  
8 B of chapter 1 of the Internal Revenue Code of 1986 (re-

1 relating to additional itemized deductions for individuals) is  
 2 amended by redesignating section 221 as section 222 and  
 3 by inserting after section 220 the following new section:

4 **“SEC. 221. HIGHER EDUCATION EXPENSES.**

5       “(a) ALLOWANCE OF DEDUCTION.—In the case of an  
 6 individual, there shall be allowed as a deduction an  
 7 amount equal to—

8               “(1) the qualified higher education expenses,  
 9       and

10              “(2) interest on qualified higher education  
 11       loans,  
 12 paid by the taxpayer during the taxable year.

13       “(b) LIMITATION BASED ON MODIFIED ADJUSTED  
 14 GROSS INCOME.—

15              “(1) IN GENERAL.—The amount which would  
 16       (but for this subsection) be taken into account under  
 17       subsection (a) shall be reduced (but not below zero)  
 18       by the amount determined under paragraph (2).

19              “(2) AMOUNT OF REDUCTION.—The amount  
 20       determined under this paragraph equals the amount  
 21       which bears the same ratio to the amount which  
 22       would be so taken into account as—

23                      “(A) the excess of—

24                              “(i) the taxpayer’s modified adjusted  
 25                              gross income for such taxable year, over

1 “(ii) \$140,000 (\$200,000 in the case  
2 of a joint return), bears to

3 “(B) \$20,000.

4 “(3) MODIFIED ADJUSTED GROSS INCOME.—

5 For purposes of this subsection, the term ‘modified  
6 adjusted gross income’ means the adjusted gross in-  
7 come of the taxpayer for the taxable year deter-  
8 mined—

9 “(A) without regard to this section and  
10 sections 911, 931, and 933, and

11 “(B) after the application of sections 86,  
12 135, 219, 220, and 469.

13 For purposes of the sections referred to in subpara-  
14 graph (B), adjusted gross income shall be deter-  
15 mined without regard to the deduction allowed under  
16 this section.

17 “(4) INFLATION ADJUSTMENTS.—

18 “(A) IN GENERAL.—In the case of a tax-  
19 able year beginning after 1999, the \$140,000  
20 and \$200,000 amounts described in paragraph  
21 (2) shall each be increased by an amount equal  
22 to—

23 “(i) such dollar amounts, multiplied  
24 by

1 “(ii) the cost-of-living adjustment de-  
 2 termined under section 1(f)(3) for the cal-  
 3 endar year in which the taxable year be-  
 4 gins, determined by substituting ‘calendar  
 5 year 1998’ for ‘calendar year 1992’ in sub-  
 6 paragraph (B) thereof.

7 “(B) ROUNDING.—If any amount as ad-  
 8 justed under subparagraph (A) is not a multiple  
 9 of \$5,000, such amount shall be rounded to the  
 10 next lowest multiple of \$5,000.

11 “(c) QUALIFIED HIGHER EDUCATION EXPENSES.—  
 12 For purposes of this section—

13 “(1) QUALIFIED HIGHER EDUCATION EX-  
 14 PENSES.—

15 “(A) IN GENERAL.—The term ‘qualified  
 16 higher education expenses’ means—

17 “(i) tuition and fees charged by an  
 18 educational institution and required for the  
 19 enrollment or attendance of—

20 “(I) the taxpayer,

21 “(II) the taxpayer’s spouse,

22 “(III) any dependent of the tax-  
 23 payer with respect to whom the tax-  
 24 payer is allowed a deduction under  
 25 section 151, or

1                   “(IV) any grandchild of the tax-  
2                   payer,  
3                   as an eligible student at an institution of  
4                   higher education, and

5                   “(ii) reasonable living expenses for  
6                   such an individual while away from home  
7                   and attending such institution.

8                   “(B) ELIGIBLE COURSES.—Amounts paid  
9                   for qualified higher education expenses of any  
10                  individual shall be taken into account under  
11                  subsection (a) only to the extent such ex-  
12                  penses—

13                  “(i) are attributable to courses of in-  
14                  struction for which credit is allowed toward  
15                  a baccalaureate degree by an institution of  
16                  higher education or toward a certificate of  
17                  required course work at a vocational  
18                  school, and

19                  “(ii) are not attributable to any grad-  
20                  uate program of such individual.

21                  “(C) EXCEPTION FOR NONACADEMIC  
22                  FEES.—Such term does not include any student  
23                  activity fees, athletic fees, insurance expenses,  
24                  or other expenses unrelated to a student’s aca-  
25                  demic course of instruction.

1           “(D) ELIGIBLE STUDENT.—For purposes  
2           of subparagraph (A), the term ‘eligible student’  
3           means a student who—

4                   “(i) meets the requirements of section  
5                   484(a)(1) of the Higher Education Act of  
6                   1965 (20 U.S.C. 1091(a)(1)), as in effect  
7                   on the date of the enactment of this sec-  
8                   tion, and

9                   “(ii) is carrying at least one-half the  
10                  normal full-time work load for the course  
11                  of study the student is pursuing, as deter-  
12                  mined by the institution of higher edu-  
13                  cation.

14           “(E) IDENTIFICATION REQUIREMENT.—No  
15           deduction shall be allowed under subsection (a)  
16           to a taxpayer with respect to an eligible student  
17           unless the taxpayer includes the name, age, and  
18           taxpayer identification number of such eligible  
19           student on the return of tax for the taxable  
20           year.

21           “(2) INSTITUTION OF HIGHER EDUCATION.—  
22           The term ‘institution of higher education’ means an  
23           institution which—

24                   “(A) is described in section 481 of the  
25                   Higher Education Act of 1965 (20 U.S.C.

1           1088), as in effect on the date of the enactment  
2           of this section, and

3           “(B) is eligible to participate in programs  
4           under title IV of such Act.

5           “(d) QUALIFIED HIGHER EDUCATION LOAN.—For  
6           purposes of this section—

7           “(1) IN GENERAL.—The term ‘qualified higher  
8           education loan’ means a loan which is—

9           “(A) made, insured, or guaranteed by the  
10          Federal Government,

11          “(B) made by a State or a political sub-  
12          division of a State,

13          “(C) made from the proceeds of a qualified  
14          student loan bond under section 144(b), or

15          “(D) made by an institution of higher edu-  
16          cation (as defined in section 1201(a) of the  
17          Higher Education Act of 1965 (20 U.S.C.  
18          1141(a))).

19          “(2) LIMITATION.—The amount of interest on  
20          a qualified higher education loan which is taken into  
21          account under subsection (a)(2) shall not exceed the  
22          amount which bears the same ratio to such amount  
23          of interest as—

24          “(A) the proceeds from such loan used for  
25          qualified higher education expenses, bears to

1 “(B) the total proceeds from such loan.

2 For purposes of the preceding sentence, the term  
3 ‘qualified higher education expenses’ shall be deter-  
4 mined without regard to subsection (c)(1)(A)(i)(IV).

5 “(e) SPECIAL RULES.—

6 “(1) NO DOUBLE BENEFIT.—

7 “(A) IN GENERAL.—No deduction shall be  
8 allowed under subsection (a) for any expense  
9 for which a deduction is allowable to the tax-  
10 payer under any other provision of this chapter  
11 unless the taxpayer irrevocably waives his right  
12 to the deduction of such expense under such  
13 other provision.

14 “(B) DEPENDENTS.—No deduction shall  
15 be allowed under subsection (a) to any individ-  
16 ual with respect to whom a deduction under  
17 section 151 is allowable to another taxpayer for  
18 a taxable year beginning in the calendar year in  
19 which such individual’s taxable year begins.

20 “(C) SAVINGS BOND EXCLUSION.—A de-  
21 duction shall be allowed under subsection (a)  
22 for qualified higher education expenses only to  
23 the extent the amount of such expenses exceeds  
24 the amount excludable under section 135 for  
25 the taxable year.



1           “(2) LIMITATION ON TAXABLE YEAR OF DE-  
2       DUCTION.—

3           “(A) IN GENERAL.—A deduction shall be  
4       allowed under subsection (a) for qualified high-  
5       er education expenses for any taxable year only  
6       to the extent such expenses are in connection  
7       with enrollment at an institution of higher edu-  
8       cation during the taxable year.

9           “(B) CERTAIN PREPAYMENTS ALLOWED.—  
10       Subparagraph (A) shall not apply to qualified  
11       higher education expenses paid during a taxable  
12       year if such expenses are in connection with an  
13       academic term beginning during such taxable  
14       year or during the first 3 months of the next  
15       taxable year.

16          “(3) ADJUSTMENT FOR CERTAIN SCHOLAR-  
17       SHIPS AND VETERANS BENEFITS.—The amount of  
18       qualified higher education expenses otherwise taken  
19       into account under subsection (a) or (d)(2) with re-  
20       spect to the education of an individual shall be re-  
21       duced (before the application of subsection (b)) by  
22       the sum of the amounts received with respect to  
23       such individual for the taxable year as—

24           “(A) a qualified scholarship which under  
25       section 117 is not includable in gross income,

1           “(B) an educational assistance allowance  
2           under chapter 30, 31, 32, 34, or 35 of title 38,  
3           United States Code, or

4           “(C) a payment (other than a gift, be-  
5           quest, devise, or inheritance within the meaning  
6           of section 102(a)) for educational expenses, or  
7           attributable to enrollment at an eligible edu-  
8           cational institution, which is exempt from in-  
9           come taxation by any law of the United States.

10          “(4) NO DEDUCTION FOR MARRIED INDIVID-  
11          UALS FILING SEPARATE RETURNS.—If the taxpayer  
12          is a married individual (within the meaning of sec-  
13          tion 7703), this section shall apply only if the tax-  
14          payer and the taxpayer’s spouse file a joint return  
15          for the taxable year.

16          “(5) NONRESIDENT ALIENS.—If the taxpayer is  
17          a nonresident alien individual for any portion of the  
18          taxable year, this section shall apply only if such in-  
19          dividual is treated as a resident alien of the United  
20          States for purposes of this chapter by reason of an  
21          election under subsection (g) or (h) of section 6013.

22          “(6) REGULATIONS.—The Secretary may pre-  
23          scribe such regulations as may be necessary or ap-  
24          propriate to carry out this section, including regula-

1        tions requiring recordkeeping and information re-  
 2        porting.”

3        (b) DEDUCTION ALLOWED IN COMPUTING AD-  
 4 JUSTED GROSS INCOME.—Section 62(a) of such Code is  
 5 amended by inserting after paragraph (16) the following  
 6 new paragraph:

7            “(17) HIGHER EDUCATION EXPENSES.—The  
 8        deduction allowed by section 221.”

9        (c) CONFORMING AMENDMENT.—The table of sec-  
 10 tions for part VII of subchapter B of chapter 1 of such  
 11 Code is amended by striking the item relating to section  
 12 221 and inserting:

“Sec. 221. Higher education expenses.  
 “Sec. 222. Cross reference.”

13        (d) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to payments made after December  
 15 31, 1995.

16 **SEC. 3. EDUCATION SAVINGS PLANS.**

17        (a) IN GENERAL.—Part VII of subchapter B of chap-  
 18 ter 1 of the Internal Revenue Code of 1986 (relating to  
 19 additional itemized deductions for individuals) is amended  
 20 by redesignating section 222 as section 223 and by insert-  
 21 ing after section 221 the following new section:

22 **“SEC. 222. EDUCATION SAVINGS PLANS.**

23        “(a) DEDUCTION ALLOWED.—In the case of an indi-  
 24 vidual, there shall be allowed as a deduction the amount

1 paid in cash during the taxable year by such individual  
2 to an education savings plan established for the purpose  
3 of accumulating funds to pay the qualified higher edu-  
4 cation expenses of individual who is an eligible individual  
5 with respect to the taxpayer.

6 “(b) LIMITATIONS.—

7 “(1) IN GENERAL.—The amount allowable as a  
8 deduction under subsection (a) to the taxpayer for  
9 any taxable year with respect to amounts paid to the  
10 education savings plan of each eligible individual  
11 shall not exceed \$4,000.

12 “(2) LIMITATION BASED ON MODIFIED AD-  
13 JUSTED GROSS INCOME.—The \$4,000 amount in  
14 paragraph (1) shall be reduced (but not below zero)  
15 by the amount which bears the same ratio to \$4,000  
16 as—

17 “(A) the excess of—

18 “(i) the taxpayer’s modified adjusted  
19 gross income for such taxable year, over

20 “(ii) the dollar amount applicable to  
21 the taxpayer for such taxable year under  
22 section 221(b)(2)(A)(ii), bears to

23 “(B) \$20,000.

24 “(3) MODIFIED ADJUSTED GROSS INCOME.—

25 For purposes of this subsection, the term ‘modified

1       adjusted gross income’ means the adjusted gross in-  
 2       come of the taxpayer for the taxable year deter-  
 3       mined—

4               “(A) without regard to this section and  
 5       sections 911, 931, and 933, and

6               “(B) after the application of sections 86,  
 7       135, 219, 220, 221, and 469.

8       For purposes of the sections referred to in subpara-  
 9       graph (B), adjusted gross income shall be deter-  
 10      mined without regard to the deduction allowed under  
 11      this section.

12              “(3) PLAN MAY NOT BE ESTABLISHED FOR  
 13      BENEFIT OF MORE THAN 1 INDIVIDUAL.—An edu-  
 14      cation savings plan may not be established for the  
 15      benefit of more than 1 individual.

16              “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
 17      poses of this section—

18              “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
 19      individual’ means an individual who is—

20                      “(A) the taxpayer,

21                      “(B) the taxpayer’s spouse,

22                      “(C) any dependent of the taxpayer with  
 23      respect to whom the taxpayer is allowed a de-  
 24      duction under section 151, or

25                      “(D) any grandchild of the taxpayer.

1           “(2) EDUCATION SAVINGS PLAN.—The term  
2           ‘education savings plan’ means a trust created or or-  
3           ganized in the United States exclusively for the pur-  
4           pose of paying the qualified higher education ex-  
5           penses of an eligible individual, but only if the writ-  
6           ten governing instrument creating the trust meets  
7           the following requirements:

8                   “(A) No contribution will be accepted un-  
9                   less it is in cash, and contributions will not be  
10                  accepted for any taxable year in excess of  
11                  \$4,000.

12                  “(B) The trustee is a bank (as defined in  
13                  section 408(n)) or another person who dem-  
14                  onstrates to the satisfaction of the Secretary  
15                  that the manner in which that person will ad-  
16                  minister the trust will be consistent with the re-  
17                  quirements of this section.

18                  “(C) No part of the trust assets will be in-  
19                  vested in life insurance contracts.

20                  “(D) The assets of the trust shall not be  
21                  commingled with other property except in a  
22                  common trust fund or common investment  
23                  fund.

24           “(3) TIME WHEN CONTRIBUTIONS DEEMED  
25           MADE.—A taxpayer shall be deemed to have made a

1 contribution on the last day of the preceding taxable  
2 year if the contribution is made on account of such  
3 taxable year and is made not later than the time  
4 prescribed by law for filing the return for such tax-  
5 able year (including extensions thereof).

6 “(4) QUALIFIED HIGHER EDUCATION EX-  
7 PENSES.—The term ‘qualified higher education ex-  
8 penses’ has the meaning given such term by section  
9 221(c).

10 “(5) INSTITUTION OF HIGHER EDUCATION.—  
11 The term ‘institution of higher education’ has the  
12 meaning given such term by section 221(c).

13 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

14 “(1) IN GENERAL.—Except as otherwise pro-  
15 vided in this subsection, any amount paid or distrib-  
16 uted out of an education savings plan shall be in-  
17 cluded in gross income of the payee or distributee  
18 for the taxable year in which the payment or dis-  
19 tribution is received to the extent such amount is  
20 not the return of a contribution for which no deduc-  
21 tion was allowed under subsection (a).

22 “(2) DISTRIBUTION USED TO PAY QUALIFIED  
23 HIGHER EDUCATION EXPENSES.—Paragraph (1)  
24 shall not apply to any payment or distribution out  
25 of an education savings plan to the extent such pay-

1       ment or distribution is used exclusively to pay the  
2       qualified higher education expenses incurred by the  
3       individual for whose benefit the plan is established  
4       while such individual is an eligible student (as de-  
5       fined in section 221).

6               “(3) DISTRIBUTIONS TO ANOTHER PLAN OR TO  
7       INSTITUTION OF HIGHER EDUCATION.—Paragraph  
8       (1) shall not apply to any distribution under sub-  
9       section (c)(2)(E)(ii).

10              “(4) EXCESS CONTRIBUTIONS RETURNED BE-  
11       FORE DUE DATE OF RETURN.—Paragraph (1) does  
12       not apply to the distribution of any contribution paid  
13       during a taxable year to an education savings plan  
14       to the extent that such contribution exceeds the  
15       amount allowable as a deduction under subsection  
16       (a) for contributions to such plan if—

17                      “(A) such distribution is received on or be-  
18       fore the day prescribed by law (including exten-  
19       sions of time) for filing such individual’s return  
20       for such taxable year,

21                      “(B) no deduction is allowed under sub-  
22       section (a) with respect to such excess contribu-  
23       tion, and



1           “(C) such distribution is accompanied by  
2           the amount of net income attributable to such  
3           excess contribution.

4           Any net income described in subparagraph (C) shall  
5           be included in the gross income of the individual for  
6           the taxable year in which such excess contribution  
7           was made.

8           “(e) TAX TREATMENT OF PLANS.—

9           “(1) EXEMPTION FROM TAX.—An education  
10          savings plan is exempt from taxation under this sub-  
11          title unless such plan has ceased to be an education  
12          savings plan by reason of paragraph (3). Notwith-  
13          standing the preceding sentence, any such plan is  
14          subject to the taxes imposed by section 511 (relating  
15          to imposition of tax on unrelated business income of  
16          charitable, etc. organizations).

17          “(2) AMOUNT IN PLAN NOT TO AFFECT ELIGI-  
18          BILITY FOR OTHER FEDERAL ASSISTANCE.—  
19          Amounts held in any education savings plan shall  
20          not be taken into account in determining the eligi-  
21          bility for, or the amount of, any grant under any  
22          Federal student assistance program.

23          “(3) LOSS OF EXEMPTION OF PLAN WHERE IN-  
24          DIVIDUAL ENGAGES IN PROHIBITED TRANS-  
25          ACTION.—

1           “(A) IN GENERAL.—If the individual for  
2           whose benefit an education savings plan is es-  
3           tablished or any individual who contributes to  
4           such plan engages in any transaction prohibited  
5           by section 4975 with respect to the plan, the  
6           plan shall cease to be an education savings plan  
7           as of the first day of the taxable year (of the  
8           individual so engaging in such transaction) dur-  
9           ing which such transaction occurs.

10          “(B) PLAN TREATED AS DISTRIBUTING  
11          ALL ITS ASSETS.—In any case in which any  
12          plan ceases to be an education savings plan by  
13          reason of subparagraph (A) as of the first day  
14          of any taxable year, paragraph (1) of subsection  
15          (d) shall apply as if there was a distribution on  
16          such first day in an amount equal to the fair  
17          market value (on such first day) of all assets in  
18          the plan (on such first day).

19          “(4) EFFECT OF PLEDGING PLAN AS SECU-  
20          RITY.—If, during any taxable year, the individual for  
21          whose benefit an education savings plan is estab-  
22          lished, or any individual who contributes to such  
23          plan, uses the plan or any portion thereof as security  
24          for a loan, the portion so used shall be treated as  
25          distributed to the individual so using such portion.

1       “(f) ADDITIONAL TAX ON CERTAIN AMOUNTS IN-  
2 CLUDED IN GROSS INCOME.—

3               “(1) DISTRIBUTION NOT USED FOR QUALIFIED  
4 HIGHER EDUCATION EXPENSES.—In the case of any  
5 payment or distribution to which subsection (d)(1)  
6 applies, the tax liability of each payee or distributee  
7 under this chapter for the taxable year in which the  
8 payment or distribution is received shall be increased  
9 by an amount equal to 10 percent of the amount of  
10 the distribution which is includible in the gross in-  
11 come of such payee or distributee for such taxable  
12 year.

13               “(2) DISQUALIFICATION CASES.—If an amount  
14 is includible in the gross income of an individual for  
15 a taxable year because such amount is required to  
16 be treated as a distribution under paragraph (2) or  
17 (3) of subsection (e), such individual’s tax liability  
18 under this chapter for such taxable year shall be in-  
19 creased by an amount equal to 10 percent of such  
20 amount required to be treated as a distribution and  
21 included in his gross income.

22               “(3) DISABILITY OR DEATH CASES.—Para-  
23 graphs (1) and (2) shall not apply if the payment  
24 or distribution is made after the individual for whose

1       benefit the education savings plan becomes disabled  
2       within the meaning of section 72(m)(7) or dies.

3       “(g) COMMUNITY PROPERTY LAWS.—This section  
4 shall be applied without regard to any community property  
5 laws.

6       “(h) CUSTODIAL PLANS.—For purposes of this sec-  
7 tion, a custodial plan shall be treated as a trust if the  
8 assets of such plan are held by a bank (as defined in sec-  
9 tion 408(n)) or another person who demonstrates, to the  
10 satisfaction of the Secretary, that the manner in which  
11 he will administer the plan will be consistent with the re-  
12 quirements of this section, and if the custodial plan would,  
13 except for the fact that it is not a trust, constitute an  
14 education savings plan described in subsection (c)(2). For  
15 purposes of this title, in the case of a custodial plan treat-  
16 ed as a trust by reason of the preceding sentence, the cus-  
17 todian of such plan shall be treated as the trustee thereof.

18       “(i) REPORTS.—The trustee of an education savings  
19 plan shall make such reports regarding such plan to the  
20 Secretary and to the individual for whose benefit the plan  
21 is maintained with respect to contributions, distributions,  
22 and such other matters as the Secretary may require  
23 under regulations. The reports required by this subsection  
24 shall be filed at such time and in such manner and fur-

1 nished to such individuals at such time and in such man-  
 2 ner as may be required by those regulations.”

3 (b) DEDUCTION ALLOWED IN ARRIVING AT AD-  
 4 JUSTED GROSS INCOME.—Paragraph (7) of section 62(a)  
 5 of such Code (relating to retirement savings) is amend-  
 6 ed—

7 (1) by inserting “OR EDUCATION” after “RE-  
 8 TIREMENT” in the heading of such paragraph, and

9 (2) by inserting before the period at the end the  
 10 following: “and the deduction allowed by section 222  
 11 (relating to education savings plans)”.

12 (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973  
 13 of such Code (relating to tax on excess contributions to  
 14 individual retirement plans, certain section 403(b) con-  
 15 tracts, and certain individual retirement annuities) is  
 16 amended—

17 (1) by inserting “EDUCATION SAVINGS PLANS,”  
 18 after “MEDICAL SAVINGS ACCOUNTS,” in the heading  
 19 of such section,

20 (2) by striking “or” at the end of paragraph  
 21 (1) of subsection (a),

22 (3) by redesignating paragraph (3) of sub-  
 23 section (a) as paragraph (4) and by inserting after  
 24 paragraph (2) the following new paragraph:

1           “(3) an education savings plan (within the  
2           meaning of section 222(c)(2)), or”, and

3           (4) by adding at the end the following new sub-  
4           section:

5           “(e) EXCESS CONTRIBUTIONS TO EDUCATION SAV-  
6           INGS PLANS.—For purposes of this section, in the case  
7           of an education savings plan, the term ‘excess contribu-  
8           tions’ means the amount by which the amount contributed  
9           for the taxable year to the plan exceeds the amount allow-  
10          able as a deduction under section 222 for such taxable  
11          year. For purposes of this subsection, any contribution  
12          which is distributed out of the education savings plan in  
13          a distribution to which section 222(d)(4) applies shall be  
14          treated as an amount not contributed.”

15          (d) CONTRIBUTION NOT SUBJECT TO GIFT TAX.—  
16          Section 2503 of such Code (relating to taxable gifts) is  
17          amended by adding at the end the following new sub-  
18          section:

19          “(h) EDUCATION SAVINGS PLANS.—Any contribution  
20          made by an individual to an education savings plan de-  
21          scribed in section 222(c)(2) which is allowable as a deduc-  
22          tion under section 222 shall not be treated as a transfer  
23          of property by gift for purposes of this chapter.”

24          (e) TAX ON PROHIBITED TRANSACTIONS.—

1           (1) Section 4975 of such Code (relating to pro-  
 2           hibited transactions) is amended by adding at the  
 3           end of subsection (c) the following new paragraph:

4           “(5) SPECIAL RULE FOR EDUCATION SAVINGS  
 5           PLANS.—An individual for whose benefit an edu-  
 6           cation savings plan is established and any contribu-  
 7           tor to such plan shall be exempt from the tax im-  
 8           posed by this section with respect to any transaction  
 9           concerning such plan (which would otherwise be tax-  
 10          able under this section) if, with respect to such  
 11          transaction, the plan ceases to be an education sav-  
 12          ings plan by reason of the application of section  
 13          222(e)(2)(A) to such plan.”

14          (2) Paragraph (1) of section 4975(e) is amend-  
 15          ed by striking “or” at the end of subparagraph (D),  
 16          by redesignating subparagraph (E) as subparagraph  
 17          (F), and by inserting after subparagraph (D) the  
 18          following new subparagraph:

19                 “(E) an education savings plan described  
 20                 in section 222(c)(2), or”.

21          (f) FAILURE TO PROVIDE REPORTS ON EDUCATION  
 22          SAVINGS PLANS.—

23          (1) Paragraph (2) of section 6693(a) of such  
 24          Code (relating to failure to provide reports on indi-  
 25          vidual retirement plans or annuities) is amended by

1 striking “and” at the end of subparagraph (A), by  
2 striking the period at the end of subparagraph (B)  
3 and inserting “, and”, and by adding at the end the  
4 following new subparagraph:

5 “(C) section 220(i) (relating to education  
6 savings plans).”

7 (2) The section heading for section 6693 of  
8 such Code is amended by inserting “or on education  
9 savings plans” after “annuities”.

10 (g) SPECIAL RULE FOR DETERMINING AMOUNTS OF  
11 SUPPORT FOR DEPENDENT.—Subsection (b) of section  
12 152 of such Code (relating to definition of dependent) is  
13 amended by adding at the end the following new para-  
14 graph:

15 “(6) A distribution from an education savings  
16 plan described in section 222(c)(2) to the individual  
17 for whose benefit such plan has been established  
18 shall not be taken into plan in determining support  
19 for purposes of this section to the extent such dis-  
20 tribution is excluded from gross income of such indi-  
21 vidual under section 222(d)(2).”

22 (h) CLERICAL AMENDMENTS.—

23 (1) The table of sections for part VII of sub-  
24 chapter B of chapter 1 of such Code is amended by



1 striking the item relating to section 222 and insert-  
 2 ing the following new items:

“Sec. 222. Education savings plans.  
 “Sec. 223. Cross references.”

3 (2) The table of sections for chapter 43 of such  
 4 Code is amended by striking the item relating to sec-  
 5 tion 4973 and inserting the following new item:

“Sec. 4973. Tax on excess contributions to individual retirement  
 accounts, medical savings accounts, education sav-  
 ings plans, certain 403(b) contracts, and certain in-  
 dividual retirement annuities.”

6 (3) The table of sections for subchapter B of  
 7 chapter 68 of such Code is amended by striking the  
 8 item relating to section 6693 and inserting the fol-  
 9 lowing new item:

“Sec. 6693. Failure to provide reports on individual retirement  
 accounts or annuities or on education savings  
 plans.”

10 (i) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to contributions made in taxable  
 12 years beginning after December 31, 1995.

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